

1 J. Noah Hagey, Esq. (SBN: 262331)
hagey@braunhagey.com
2 Matthew Borden, Esq. (SBN: 214323)
borden@braunhagey.com
3 BRAUNHAGEY & BORDEN LLP
220 Sansome Street, Second Floor
4 San Francisco, CA 94104
Telephone: (415) 599-0210
5 Facsimile: (415) 276-1808

6 Richard J. Rogers, Esq. (SBN: 189978)
richardrogers@globaldiligence.com
7 GLOBAL DILIGENCE LLP
Kemp House
8 152 City Rd
London EC1V 2NX
9 UNITED KINGDOM
Telephone: +44 (0)74 84822740

10 COUNSEL FOR APPLICANT SAM RAINSY
11

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 *In re* Ex Parte Application of
16 SAM RAINSY, an individual residing in France,
17 Applicant,
18 For an Order Pursuant to 28 U.S.C. § 1782
19 Granting Leave to Obtain Discovery from
20 FACEBOOK, INC.,
21 Respondent,
22 For use in connection with Foreign Proceedings.

Case No.

**DECLARATION OF J. NOAH HAGEY IN
SUPPORT OF *EX PARTE* APPLICATION
FOR AN ORDER PURSUANT TO 28
U.S.C. § 1782 GRANTING LEAVE TO
OBTAIN DISCOVERY FOR USE IN
FOREIGN PROCEEDINGS**

FILED

FEB 08 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SK

CV

18 80 024 MISC

1 I, J. Noah Hagey, Esq., declare as follows:

2 1. I am licensed to practice before this Court and am counsel of record for Sam Rainsy
3 (“Applicant”). I make this declaration based on personal knowledge. If called as a witness, I could
4 and would testify competently to the facts stated herein.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of the subpoena Applicant
6 Sam Rainsy is seeking leave to serve on Facebook, Inc. (“Facebook”). Granting the Application
7 for an order pursuant to 28 U.S.C. § 1782 would allow Mr. Sam to serve the subpoena seeking
8 targeted discovery.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of Mr. Sam’s Proposed
10 Order.

11 4. Attached hereto as **Exhibit 3** is a true and correct copy of an article from the
12 Facebook Newsroom discussing the effect that social media has on democracy and recognizing that
13 Facebook “ha[s] a moral duty to understand how these technologies are being used and what can be
14 done to make communities like Facebook as representative, civil and trustworthy as possible.” The
15 article is accessible at <https://newsroom.fb.com/news/2018/01/effect-social-media-democracy/>.

16 5. Attached hereto as **Exhibit 4** is a true and correct copy of an article from the
17 Phnom Penh Post detailing Hun Sen’s family’s business empire, all of whom have a well-
18 documented history of colluding to cement their control over Cambodia’s public and private
19 sectors resulting in “Hun Sen having near-total control over the country.” The article is accessible
20 at [http://www.phnompenhpost.com/national-post-depth-politics/inside-hun-familys-business-](http://www.phnompenhpost.com/national-post-depth-politics/inside-hun-familys-business-empire)
21 [empire](http://www.phnompenhpost.com/national-post-depth-politics/inside-hun-familys-business-empire).

22 6. Attached hereto as **Exhibit 5** is a true and correct copy of a report from Global
23 Witness titled, “*Hostile Takeover: the Corporate Empire of Cambodia’s Ruling Family*” and is
24 accessible at <https://globalwitness.org/en/reports/hostile-takeover/>.

25 7. Attached hereto as **Exhibit 6** is a true and correct copy of a Human Rights Watch
26 Report summarizing the dictatorship of Hun Sen who has remained in power for over 30 years by
27 manipulating elections, censorship, extrajudicial killings, arbitrary arrests, and summary trials. The
28 report is accessible at <https://www.hrw.org/report/2015/01/12/30-years-hun-sen/violence->

1 repression-and-corruption-cambodia.

2 8. Attached hereto as **Exhibit 7** is a true and correct copy of an article from the Phnom
3 Penh Post, dated November 17, 2017, summarizing the Cambodian Supreme Court trial that
4 disbanded CNRP and banned 118 of its senior officials from any political activity in Cambodia for
5 five years. The article is accessible at [http://www.phnompenhpost.com/national-post-depth-](http://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrc-dissolved-supreme-court-ruling)
6 [politics/death-democracy-cnrc-dissolved-supreme-court-ruling.](http://www.phnompenhpost.com/national-post-depth-politics/death-democracy-cnrc-dissolved-supreme-court-ruling)

7 9. Attached hereto as **Exhibit 8** is a true and correct copy of a statement by the Press
8 Secretary on the setbacks to democracy in Cambodia, dated November 16, 2017. The statement is
9 accessible at [https://www.whitehouse.gov/briefings-statements/statement-press-secretary-setbacks-](https://www.whitehouse.gov/briefings-statements/statement-press-secretary-setbacks-democracy-cambodia/)
10 [democracy-cambodia/.](https://www.whitehouse.gov/briefings-statements/statement-press-secretary-setbacks-democracy-cambodia/)

11 10. Attached hereto as **Exhibit 9** is a true and correct copy of a resolution by the U.S.
12 Senate reaffirming the commitment of the United States to promote democracy, human rights, and
13 the rule of law in Cambodia. The resolution is accessible at [https://www.congress.gov/bill/115th-](https://www.congress.gov/bill/115th-congress/senate-resolution/279/text)
14 [congress/senate-resolution/279/text.](https://www.congress.gov/bill/115th-congress/senate-resolution/279/text)

15 11. Attached hereto as **Exhibit 10** is a true and correct copy of an article from the
16 Phnom Penh Post detailing Hin Vansreypov's sentencing for "incitement to commit a felony" for
17 posting on Facebook that Hun's regime was responsible for the assassination of Dr. Ley. The
18 article is accessible at [www.phnompenhpost.com/national/woman-who-accused-hun-sen-kem-ley-](http://www.phnompenhpost.com/national/woman-who-accused-hun-sen-kem-ley-assassination-facebook-sentenced)
19 [assassination-facebook-sentenced.](http://www.phnompenhpost.com/national/woman-who-accused-hun-sen-kem-ley-assassination-facebook-sentenced)

20 12. Attached hereto as **Exhibit 11** is a true and correct copy of a BBC News article,
21 dated October 31, 2017, describing how Facebook became Cambodia's most popular news source
22 in 2016. The article is accessible at [http://www.bbc.com/news/world-asia-41801071.](http://www.bbc.com/news/world-asia-41801071)

23 13. Attached hereto as **Exhibit 12** is a true and correct copy of an article from the
24 Jakarta Post, dated March 3, 2016, detailing Hun Sen's misuse of the Facebook platform to
25 manipulate the Cambodian public into thinking that he enjoys widespread public support. The
26 article is accessible at [http://www.thejakartapost.com/news/2016/03/03/cambodia-leaders-rev-](http://www.thejakartapost.com/news/2016/03/03/cambodia-leaders-rev-facebook-rivalry-popularity-soars.html)
27 [facebook-rivalry-popularity-soars.html.](http://www.thejakartapost.com/news/2016/03/03/cambodia-leaders-rev-facebook-rivalry-popularity-soars.html)

1 14. Attached hereto as **Exhibit 13** is a true and correct copy of a list of countries in the
2 world by population for the year 2017 compiled by worldometers. The list is accessible at
3 www.worldometers.info/world-population/population-by-country/.

4 15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from Hun Sen's
5 Facebook profile which shows that his page is "liked" by nearly 9.4 million people. The Facebook
6 profile is accessible at <https://www.facebook.com/hunsencambodia/>.

7 16. Attached hereto as **Exhibit 15** is a true and correct copy of a BuzzFeed News article
8 titled, "*This Country's Democracy Has Fallen Apart – And it Played Out to Millions on*
9 *Facebook.*" The article was released on January 21, 2018 and is accessible at
10 [https://www.buzzfeed.com/meghara/facebook-cambodia-](https://www.buzzfeed.com/meghara/facebook-cambodia-democracy?utm_term=.pqLLkp2LK4#.rmkEA5kEOy)
11 [democracy?utm_term=.pqLLkp2LK4#.rmkEA5kEOy](https://www.buzzfeed.com/meghara/facebook-cambodia-democracy?utm_term=.pqLLkp2LK4#.rmkEA5kEOy).

12 17. Attached hereto as **Exhibit 16** is a true and correct copy of a post from Facebook's
13 Business page explaining that utilizing click farms to generate fake "likes" on Facebook pages and
14 posts is a direct violation of Facebook's policies. The post is accessible at
15 <https://www.facebook.com/business/a/page/fake-likes>.

16 18. Attached hereto as **Exhibit 17** is a true and correct copy of an article from The
17 Nation, titled, "*Fake News and the Death of Democracy in Cambodia.*" The article was released on
18 November 21, 2017 and is accessible at [https://www.thenation.com/article/fake-news-and-the-](https://www.thenation.com/article/fake-news-and-the-death-of-democracy-in-cambodia/)
19 [death-of-democracy-in-cambodia/](https://www.thenation.com/article/fake-news-and-the-death-of-democracy-in-cambodia/).

20 19. Attached here to as **Exhibit 17A** is a true and correct copy of a screenshot of a
21 Facebook video post from Hun Sen's Facebook page on February 1, 2018 of a recent speech in
22 which he threatened to kill Applicant. The video is accessible at
23 <https://www.facebook.com/hunsencambodia/videos/1594981950550296/>. From -41:50 to -38:00,
24 Hun threatens to use Soviet-made multiple rocket launchers BM-21 against Applicant and his
25 supporters. From -9:50 to -8:10, Hun threatens to have Applicant illegally arrested (or abducted) if
26 Applicant dares to come to *any part of Asia*, i.e., including territories outside of Cambodia.

27 20. Attached hereto as **Exhibit 18** is a true and correct copy of a New York Times
28 article describing the fact that Facebook has become "embroiled in a larger debate over its role in

1 spreading fake news and misinformation aimed at influencing elections in the United States and
2 other nations.” The article is accessible at

3 <https://www.nytimes.com/2018/01/14/technology/facebook-news-feed-changes.html>.

4 21. Attached hereto as **Exhibit 19** is a true and correct copy of an article from The
5 Atlantic commenting on the fact that Facebook is now reckoning “with its role in passively
6 enabling human rights abuses.” The article is accessible at

7 [https://www.theatlantic.com/technology/archive/2017/12/could-facebook-be-tried-for-war-](https://www.theatlantic.com/technology/archive/2017/12/could-facebook-be-tried-for-war-crimes/548639/)
8 [crimes/548639/](https://www.theatlantic.com/technology/archive/2017/12/could-facebook-be-tried-for-war-crimes/548639/).

9 22. Attached hereto as **Exhibit 20** is a true and correct copy of an article from the New
10 Yorker describing how Cambodia’s premier independent newspaper, *The Cambodian Daily* was
11 forced to shut down after the Cambodian government “presented the publishers with a spurious tax
12 bill of over six million dollars.” The article is accessible at

13 <https://www.newyorker.com/news/news-desk/the-devastating-shutdown-of-the-cambodia-daily>.

14 23. Attached hereto as **Exhibit 21** is a true and correct copy of an article from the UN
15 News Centre titled, “*UN rights chief voices concern about Cambodia election after opposition*
16 *ban*.” The article is accessible at

17 <http://www.un.org/apps/news/story.asp?NewsID=58111#.WmJYh6inE2w>.

18 24. Attached hereto as **Exhibit 21A** is a true and correct copy of Facebook’s Data
19 Policy. The Data Policy is accessible at <https://facebook.com/about/privacy>.

20 25. Attached hereto as **Exhibit 21B** is a true and correct copy of Facebook’s
21 Community Standards. The Community Standards are accessible at

22 <https://facebook.com/communitystandards>.

23 26. Attached hereto as **Exhibit 21C** is a true and correct copy of Facebook’s principles.
24 The Facebook policies are based on the site’s foundational and guiding principle of “mak[ing] the
25 world more open and transparent” so as to “create greater understanding and connection.” The
26 Facebook principles are accessible at <https://www.facebook.com/principles.php>.

27 27. Attached hereto as **Exhibit 22** is a true and correct copy of an article from the New
28 York Times, detailing Facebook’s General Counsel’s testimony before Congress that more than

1 126 million users potentially saw inflammatory political ads bought by a Krelim-linked company
2 leading up to the 2016 U.S. presidential elections. The article is accessible at
3 [https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-](https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-congress.html?mtrref=undefined)
4 [congress.html?mtrref=undefined](https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-congress.html?mtrref=undefined).

5 28. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from Mark
6 Zuckerberg's Facebook profile. His posting from January 4, 2018 echoes the statements Mr.
7 Zuckerberg made during Facebook's November 1, 2017 Third Quarter earnings call, during which
8 he promised Facebook would make substantial investments to increase the "security and integrity"
9 of its platform, with the aim of, among other things, stopping election meddling and removing false
10 news and other problematic content. The profile is accessible at <https://www.facebook.com/zuck>.

11 29. Attached hereto as **Exhibit 24** is a true and correct copy of a transcript from
12 Facebook's Third Quarter 2017 Results Conference Call. The transcript is accessible at
13 [https://s21.q4cdn.com/399680738/files/doc_financials/2017/Q3/Q3-'17-Earnings-call-](https://s21.q4cdn.com/399680738/files/doc_financials/2017/Q3/Q3-'17-Earnings-call-transcript.pdf)
14 [transcript.pdf](https://s21.q4cdn.com/399680738/files/doc_financials/2017/Q3/Q3-'17-Earnings-call-transcript.pdf).

15 30. Attached hereto as **Exhibit 24A** is a true and correct copy of Facebook's Pages
16 Terms which "apply to all pages on Facebook," and outlaw posting "false, misleading, fraudulent,
17 or deceptive ... content." Facebook's Pages Terms are accessible at
18 https://www.facebook.com/page_guidelines.php.

19 31. Attached hereto as **Exhibit 24B** is a true and correct copy of a page from Facebook
20 Security describing Improvements to Our Site Integrity Systems which states that Facebook has
21 "increased [its] automated efforts to remove Likes on Pages that may have been gained by means
22 that violate [its] Terms," and is "aggressively go[ing] after the bad actors behind fake likes." The
23 page is accessible at [https://www.facebook.com/notes/facebook-security/improvements-to-our-site-](https://www.facebook.com/notes/facebook-security/improvements-to-our-site-integrity-systems/10151005934870766)
24 [integrity-systems/10151005934870766](https://www.facebook.com/notes/facebook-security/improvements-to-our-site-integrity-systems/10151005934870766).

25 32. Attached hereto as **Exhibit 25** is a true and correct copy of Facebook's Nasdaq
26 profile indicating it is incorporated in Delaware and headquartered in Menlo Park, California. The
27 profile is accessible at [http://www.nasdaq.com/markets/ipos/company/facebook-inc-673740-](http://www.nasdaq.com/markets/ipos/company/facebook-inc-673740-69138)
28 [69138](http://www.nasdaq.com/markets/ipos/company/facebook-inc-673740-69138).

1 33. Attached hereto as **Exhibit 26** is a true and correct copy of Facebook's Terms of
2 Service, which specify "You will resolve any claim, cause of action or dispute (claim) you have
3 with us arising out of or relating to this Statement or Facebook exclusively in the U.S. District
4 Court for the Northern District of California[.]". See **Exhibit 26** § 15(1). The Terms of Service
5 also specify that foreign users "consent to having [their] personal data transferred to and processed
6 in the United States." See **Exhibit 26** at § 16. The Terms of Service are accessible at
7 <https://www.facebook.com/terms.php>.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct.

10
11 Dated: February 8, 2018

By: 

J. Noah Hagey, Esq.